

LARIVIERE, GRUBMAN & PAYNE, LLP
 Robert W. Payne, Esq. (Bar No. 073901)
 rpayne@lgpatlaw.com
 Christopher J. Passarelli (Bar No. 241174)
 cpassarelli@lgpatlaw.com
 Post Office Box 3140
 19 Upper Ragsdale Drive
 Monterey, CA 93942-3140
 Telephone: (831) 649-8800
 Facsimile: (831) 649-8835

Attorneys for Plaintiff
 MIS SCIENCES CORPORATION

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

MIS SCIENCES CORPORATION, a California)	Case No: 3:11-cv-05444-MEJ
corporation,)	
)	STIPULATED PROTECTIVE
Plaintiff,)	ORDER
vs.)	
)	
TRUST DATA SOLUTIONS, LLC, a Texas)	
limited liability company)	
)	
Defendant.)	

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the limited information or items that are entitled under the applicable legal principles to treatment as confidential. The parties further acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order creates no entitlement to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures

that must be followed and reflects the standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

2.1 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and outside counsel (and their support staff).

2.2 Disclosure or Discovery Material: all items or information, regardless of the medium or manner generated, stored, or maintained (including, among other things, testimony, transcripts, or tangible things) that are produced or generated in disclosures or responses to discovery in this matter.

2.3 “Confidential” Information or Items: information (regardless of how generated, stored or maintained) or tangible things that qualify for protection under standards developed under F.R.Civ.P. 26(c).

2.4 “Highly Confidential – Attorneys’ Eyes Only” Information or Items: extremely sensitive “Confidential Information or Items” whose disclosure to another Party or nonparty would create a substantial risk of injury that could not be avoided by less restrictive means.

2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery Material in this action.

2.7 Designating Party: a Party or non-party that designates information or items that it produces in disclosures or in responses to discovery as “Confidential” or “Highly Confidential — Attorneys’ Eyes Only.”

1 2.8 Protected Material: any Disclosure or Discovery Material that is
2 designated as "Confidential" or as "Highly Confidential – Attorneys' Eyes Only."

3 2.9. Outside Counsel: attorneys who are not employees of a Party but who are
4 retained to represent or advise a Party in this action.

5 2.10 House Counsel: attorneys who are employees of a Party.

6 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well
7 as their support staffs).
8

9 2.12 Expert: a person with specialized knowledge or experience in a matter
10 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
11 witness or as a consultant in this action and who is not a past or a current employee of a Party or
12 of a competitor of a Party's and who, at the time of retention, is not anticipated to become an
13 employee of a Party or a competitor of a Party's. This definition includes a professional jury or
14 trial consultant retained in connection with this litigation.
15

16 2.13 Professional Vendors: persons or entities that provide litigation support
17 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;
18 organizing, storing, retrieving data in any form or medium; etc.) and their employees and
19 subcontractors.
20

21 3. SCOPE

22 The protections conferred by this Stipulation and Order cover not only Protected Material
23 (as defined above), but also any information copied or extracted therefrom, as well as all copies,
24 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
25 parties or counsel to or in court or in other settings that might reveal Protected Material.
26
27
28

1 4. DURATION

2 Even after the termination of this litigation, the confidentiality obligations imposed by
3 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
4 order otherwise directs.

5 5. DESIGNATING PROTECTED MATERIAL

6 5.1 Exercise of Restraint and Care in Designating Material for Protection.

7
8 Each Party or non-party that designates information or items for protection under this Order must
9 take care to limit any such designation to specific material that qualifies under the appropriate
10 standards. A Designating Party must take care to designate for protection only those parts of
11 material, documents, items, or oral or written communications that qualify – so that other
12 portions of the material, documents, items, or communications for which protection is not
13 warranted are not swept unjustifiably within the ambit of this Order.
14

15 Mass, indiscriminate, or routinized designations are prohibited. Designations that
16 are shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to
17 unnecessarily encumber or retard the case development process, or to impose unnecessary
18 expenses and burdens on other parties), expose the Designating Party to sanctions in the event
19 such designations are not voluntarily withdrawn pursuant to the Meet and Confer provisions of
20 Section 6.2 of this Order.
21

22 If it comes to a Party's or a non-party's attention that information or items that it
23 designated for protection do not qualify for protection at all, or do not qualify for the level of
24 protection initially asserted, that Party or non-party must promptly notify all other parties that it
25 is withdrawing the mistaken designation.

26 5.2 Manner and Timing of Designations. Except as otherwise provided in this
27 Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or
28

1 ordered, material that qualifies for protection under this Order must be clearly so designated
2 before the material is disclosed or produced.

3 Designation in conformity with this Order requires:

4 (a) for information in documentary form (apart from transcripts of
5 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
6 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” at the top
7 of each page (or adjacent to the Bates label at the bottom of each page) that contains protected
8 material.
9

10 A Party or non-party that makes original documents or materials available
11 for inspection need not designate them for protection until after the inspecting Party has
12 indicated which material it would like copied and produced. During the inspection and before the
13 designation, all of the material made available for inspection shall be deemed “HIGHLY
14 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the
15 documents it wants copied and produced, the Producing Party must determine which documents,
16 or portions thereof, qualify for protection under this Order, then, before producing the specified
17 documents, the Producing Party must affix the appropriate legend (“CONFIDENTIAL” or
18 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) at the top of each page (or
19 adjacent to the Bates label on each page) that contains Protected Material.
20
21

22 (b) for testimony given in deposition or in other pretrial or trial
23 proceedings, that the Party or non-party offering or sponsoring the testimony identify on the
24 record, before the close of the deposition, hearing, or other proceeding, all protected testimony,
25 and further specify any portions of the testimony that qualify as “HIGHLY CONFIDENTIAL –
26 ATTORNEYS’ EYES ONLY.” When it is impractical to identify separately each portion of
27 testimony that is entitled to protection, and when it appears that substantial portions of the
28

1 testimony may qualify for protection, the Party or non-party that sponsors, offers, or gives the
2 testimony may invoke on the record (before the deposition or proceeding is concluded) a right to
3 have up to 20 days to identify the specific portions of the testimony as to which protection is
4 sought and to specify the level of protection being asserted (“CONFIDENTIAL” or “HIGHLY
5 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”). Only those portions of the testimony that
6 are appropriately designated for protection within the 20 days shall be covered by the provisions
7 of this Stipulated Protective Order. Prior to the expiration of the 20 day deadline, all testimony
8 shall be regarded as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

9
10 Transcript pages containing Protected Material must be separately bound
11 by the court reporter, who must affix to the top of each such page the legend
12 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as
13 instructed by the Party or nonparty offering or sponsoring the witness or presenting the
14 testimony.
15

16 (c) for information produced in some form other than documentary, and
17 for any other tangible items, that the Producing Party affix in a prominent place on the exterior of
18 the container or containers in which the information or item is stored the legend
19 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only
20 portions of the information or item warrant protection, the Producing Party, to the extent
21 practicable, shall identify the protected portions, specifying whether they qualify as
22 “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

23
24 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
25 failure to designate qualified information or items as “Confidential” or “Highly Confidential –
26 Attorneys’ Eyes Only” does not, standing alone, waive the Designating Party’s right to secure
27 protection under this Order for such material. If material is appropriately designated as
28

1 “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” after the material was initially
2 produced, the Receiving Party, on timely notification of the designation, must make reasonable
3 efforts to assure that the material is treated in accordance with the provisions of this Order.

4
5 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s
7 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
8 economic burdens, or a later significant disruption or delay of the litigation, a Party does not
9 waive its right to challenge a confidentiality designation by electing not to mount a challenge
10 promptly after the original designation is disclosed.

11 6.2 Meet and Confer. A Party that elects to initiate a challenge to a
12 Designating Party’s confidentiality designation must do so in good faith and must begin the
13 process by conferring directly (in voice to voice dialogue; other forms of communication are not
14 sufficient) with counsel for the Designating Party. In conferring, the challenging Party must
15 explain the basis for its belief that the confidentiality designation was not proper and must give
16 the Designating Party an opportunity to review the designated material, to reconsider the
17 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
18 designation. A challenging Party may proceed to the next stage of the challenge process only if it
19 has engaged in this meet and confer process first.

20 6.3 Judicial Intervention. A Party that elects to press a challenge to a
21 confidentiality designation after considering the justification offered by the Designating Party
22 may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule
23 79-5, if applicable) that identifies the challenged material and sets forth in detail the basis for the
24 challenge. Each such motion must be accompanied by a competent declaration that affirms that
25 the movant has complied with the meet and confer requirements imposed in the preceding
26
27
28

1 paragraph and that sets forth with specificity the justification for the confidentiality designation
2 that was given by the Designating Party in the meet and confer dialogue.

3 The burden of persuasion in any such challenge proceeding shall be on the
4 Designating Party. Until the court rules on the challenge, all parties shall continue to afford the
5 material in question the level of protection to which it is entitled under the Producing Party's
6 designation.
7

8 7. ACCESS TO AND USE OF PROTECTED MATERIAL

9 7.1 Basic Principles. A Receiving Party may use Protected Material that is
10 disclosed or produced by another Party or by a non-party in connection with this case only for
11 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
12 disclosed only to the categories of persons and under the conditions described in this Order.
13 When the litigation has been terminated, a Receiving Party must comply with the provisions of
14 section 11, below (FINAL DISPOSITION).
15

16 Protected Material must be stored and maintained by a Receiving Party at a
17 location and in a secure manner that ensures that access is limited to the persons authorized
18 under this Order.

19 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
20 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
21 disclose any information or item designated CONFIDENTIAL only to:
22

23 (a) the Receiving Party's Outside Counsel of record in this action;
24 additionally, to employees of said Counsel to whom it is reasonably necessary to disclose the
25 information for this litigation and who have signed the "Agreement to Be Bound by Protective
26 Order" that is attached hereto as Exhibit A;

27 (b) the officers, directors, and employees (including House Counsel) of the
28

1 Receiving Party to whom disclosure is reasonably necessary for this litigation;

2 (c) experts (as defined in this Order) of the Receiving Party to whom
3 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be
4 Bound by Protective Order" (Exhibit A);

5 (d) the Court and its personnel;

6 (e) court reporters, their staffs, and professional vendors to whom
7 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be
8 Bound by Protective Order" (Exhibit A);

9 (f) during their depositions, witnesses in the action to whom disclosure is
10 reasonably necessary and who have signed the "Agreement to Be Bound by Protective Order"
11 (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal
12 Protected Material must be separately bound by the court reporter and may not be disclosed to
13 anyone except as permitted under this Stipulated Protective Order.
14

15 (g) the author of the document or the original source of the information.

16 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
17 ONLY" Information or Items. Unless otherwise ordered by the court or permitted in writing by
18 the Designating Party, a Receiving Party may disclose any information or item designated
19 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:
20

21 (a) the Receiving Party's Outside Counsel of record in this action;
22 additionally to employees of said Counsel to whom it is reasonably necessary to disclose the
23 information for this litigation and who have signed the "Agreement to Be Bound by Protective
24 Order" that is attached hereto as Exhibit A;

25 (b) House Counsel of a Receiving Party to whom disclosure is reasonably
26 necessary for this litigation;
27

(c) Experts (as defined in this Order) (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

(d) the Court and its personnel;

(e) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A); and

(f) the author of the document or the original source of the information.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION.

If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," the Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately and in no event more than three court days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order.

The Receiving Party also must immediately inform in writing the Party who caused the subpoena or order to issue in the other litigation that some or all the material covered by the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that caused the subpoena or order to issue.

The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued.

1 The Designating Party shall bear the burdens and the expenses of seeking protection in that court
2 of its confidential material – and nothing in these provisions should be construed as authorizing
3 or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

4 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

5 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
6 Protected Material to any person or in any circumstance not authorized under this Stipulated
7 Protective Order, the Receiving Party must immediately (a) notify in writing the Designating
8 Party of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected
9 Material, (c) inform the person or persons to whom unauthorized disclosures were made of all
10 the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment
11 and Agreement to Be Bound” that is attached hereto as Exhibit A.
12

13 10. FILING PROTECTED MATERIAL. Without written permission from the
14 Designating Party or a court order secured after appropriate notice to all interested persons, a
15 Party may not file in the public record in this action any Protected Material. A Party that seeks to
16 file under seal any Protected Material must comply with Civil Local Rule 79-5.
17

18 11. FINAL DISPOSITION. Unless otherwise ordered or agreed in writing by the
19 Producing Party, within sixty days after the final termination of this action, each Receiving Party
20 must return all Protected Material to the Producing Party. As used in this subdivision, “all
21 Protected Material” includes all copies, abstracts, compilations, summaries or any other form of
22 reproducing or capturing any of the Protected Material. With permission in writing from the
23 Designating Party, the Receiving Party may destroy some or all of the Protected Material instead
24 of returning it. Whether the Protected Material is returned or destroyed, the Receiving Party must
25 submit a written certification to the Producing Party (and, if not the same person or entity, to the
26 Designating Party) by the sixty day deadline that identifies (by category, where appropriate) all
27
28

1 the Protected Material that was returned or destroyed and that affirms that the Receiving Party
2 has not retained any copies, abstracts, compilations, summaries or other forms of reproducing or
3 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
4 retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda,
5 correspondence or attorney work product, even if such materials contain Protected Material. Any
6 such archival copies that contain or constitute Protected Material remain subject to this
7 Protective Order as set forth in Section 4 (DURATION), above.

9 12. MISCELLANEOUS

10 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
11 person to seek its modification by the Court in the future.

12 12.2 Right to Assert Other Objections. By stipulating to the entry of this
13 Protective Order no Party waives any right it otherwise would have to object to disclosing or
14 producing any information or item on any ground not addressed in this Stipulated Protective
15 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of
16 the material covered by this Protective Order.
17

18
19 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

20 Dated: April 19, 2012

LARIVIERE GRUBMAN & PAYNE, LLP

21
22 By: /s/ Christopher J. Passarelli

23 Christopher J. Passarelli

24 Attorneys for Plaintiff

25 MIS SCIENCES CORPORATION
26
27
28

1 Dated: April 19, 2012

LOCKE LORD LLP

3 By: /s/ M. Scott Fuller

4 M. Scott Fuller

Matthew K. Blackburn

Attorneys for Defendant

TRUST DATA SOLUTIONS, LLC

8 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

11 DATED: 4/20/12

Hon. Phyllis J. Hamilton
United States District Judge



EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
 [print or type full address], declare under penalty of perjury that I have read in its entirety and
 understand the Stipulated Protective Order that was issued by the United States District Court for
 the Northern District of California on [date] in the case of MIS Sciences Corporation v. Trust
 Data Solutions, LLC, Case No. 3:11-cv-05444-MEJ. I agree to comply with and to be bound by
 all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to
 so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly
 promise that I will not disclose in any manner any information or item that is subject to this
 Stipulated Protective Order to any person or entity except in strict compliance with the
 provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
 Northern District of California for the purpose of enforcing the terms of this Stipulated
 Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
 _____ [print or type full address and telephone number]
 as my California agent for service of process in connection with this action or any proceedings
 related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
 [printed name]

Signature: _____
 [signature]